but that he found that the section amounted to an absolute prohibition.

On considering the many authorities on this point and in particular the case of *Ong Aik Phow v. Rex*[1] in which Whitley, Ag. C.J., decided that the provisions of section 14(1) of the Rubber Regulation Ordinance, 1934 (which is practically the same as the present section) which reads :—

"No rubber shall be imported into the Colony unless it is accompanied by a certificate of origin duly authenticated by the competent authority in the country of origin"

amounted to absolute prohibition, I have come to the conclusion that the provisions of section 4(1) of the Dangerous Drugs Ordinance, 1952, amount to an absolute prohibition of the import of raw opium and that therefore it is unnecessary for the prosecution to prove *mens rea* or knowledge.

As Devlin, J. in *Reynolds v. G. H. Austin & Sons Ltd.*[2] stated "It may seem on the face of it hard that a man should be fined, and, indeed, made subject to imprisonment, for an offence which he did not know he was committing, but there is no doubt that the legislature has for certain purposes found that hard measure to be necessary in the public interest. The moral justification behind such laws is admirably expressed in the following words of Dean Roscoe Pound in his book, The Spirit of the Common Law: see L.Q.R., vol. 64, p. 176 :—

"Such statutes are not meant to punish the vicious will but to put pressure upon the thoughtless and inefficient to do their whole duty in the interest of public health or safety or morals."

In *Cundy v. Le Cocq*[3] Stephen, J. states, with regard to section 13 of the Licensing Act, 1872, "I am of opinion that the words of the section amount to an absolute prohibition of the sale of liquor to a drunken person, and that the existence of a *bona fide* mistake as to the condition of the person served is not an answer to the charge, but is a matter only for mitigation of the penalties that may be imposed."

Following those remarks, I think that in a case such as this where it has been held (and there is reason for so holding on the evidence before the learned President) that the appellant had no knowledge that he was importing raw opium at the time, lack of knowledge is no answer to the charge but it is a matter for mitigation of the sentence. I think, therefore, that the sentence of a fine of $2,000 or 8 months rigorous imprisonment, which was the same sentence meted out to the attendant of the lorry who was charged with the appellant and was found by the learned President to be in possession of the raw opium imported, to be excessive in the circumstances of this particular case. I reduce the sentence to a fine of $500 or in default 2 months imprisonment. The appeal against the conviction is dismissed.

Sentence reduced.
Appeal dismissed.

GOH TONG v. PUBLIC PROSECUTOR.

[A. Cr. J. (Storr, J.) July 25, 1953]

[Muar — Criminal Appeal No. 4 of 1953]

Dangerous Drugs Ordinance, s. 9(2) — Possession of opium — Service of Chemist's certificate on accused — Criminal Procedure Code (Cap. 6), s. 399(i).

This was an appeal against the conviction of the appellant on a charge of possession of prepared opium. It was argued on appeal that the Chemist's certificate put in by virtue of section 399(i) of the Criminal Procedure Code was not served on the appellant ten days' before the commencement of the trial as required by the proviso to that section.

Held: in this case the chemist's report was not delivered to the appellant or his counsel ten days before the commencement of the trial that is when the appellant was first charged and therefore the proviso to section 399(i) of the Criminal Procedure Code has not been complied with and the report not having been passed was not admissible in evidence.

Cases referred to :—

(1) *Public Prosecutor v. Tay Tuan* (1953) M.L.J. 20 dissented from.

(2) *Chong Yik v. Public Prosecutor* (1953) M.L.J. 72.

CRIMINAL APPEAL.

C. S. Jayaswal for the appellant.

M. Suffian (Federal Counsel) for the respondent.

Storr, J. : — This was an appeal from the President, Sessions Court, Muar, against the conviction of the appellant on the following charges :—

"1. That you, Goh Tong, on 5th November, 1952, at about 6.45 a.m. in premises at Parit Pechah Mukim of Sri Menanti, Muar, did have in your possession prepared opium, to wit, 14 tahils 3 chees 9 hoons contrary to section 9(1)(b) and punishable under section 9(2) of the Dangerous Drugs Ordinance No. 30 of 1952.

2. That you, Goh Tong, at the same time, date and place being the occupier of the aforesaid premises did permit those premises to be used for consumption of prepared opium, contrary to and punishable under section 10(1) of the Dangerous Drugs Ordinance No. 30 of 1952."

With regard to the second charge, I consider that the evidence is quite clear that Exhibit P1 (pipe with head and chandu lamp) and P18 (chandu smoking pipe) were used as instruments for the consumption of opium. Evidence was given by a Senior Customs Officer (Mr. A. E. J. Milroy) which raised a presumption under section 37(b) of the Dangerous Drugs Ordinance No. 30 of 1952 that the appellant was the occupier of the premises and under section 37(i) that the Exhibits P1 and P18 were used in the consumption

of opium. The evidence of the appellant, which was not accepted by the President, in no way rebutted these presumptions. I therefore dismiss the appeal with regard to this charge.

With regard to the appeal on the other charge, i.e. the first charge, Mr. Jayaswal raised the point that the Chemist's certificate, put in by virtue of section 399 (i) of the Criminal Procedure Code, was not served on him, i.e. the appellant, ten days before the commencement of the trial and that therefore it was inadmissible as evidence without being properly proved and that without it the prosecution had not proved their case. He mentioned the case of *Public Prosecutor v. Tay Tuan*[1] with which, he said, he did not agree. He considered that Mr. Justice Abbott's decision in that case was incorrect. In that case Mr. Justice Abbott held that by section 182 of the Straits Settlements Criminal Procedure Code (section 173 of the Federation of Malaya Criminal Procedure Code), when the accused is charged he may either plead guilty or claim to be tried and that in view of the words "claim to be tried" his trial does not begin until his claim has commenced to be met, i.e. on the day of the hearing.

The facts of the case briefly are as follows. It was first mentioned before a Magistrate on 6th November, 1952, when the charges were explained to the appellant; it was then adjourned to the 11th November and again to the 25th November and then to the 9th December, 1952. On the 9th December the appellant was charged and he claimed to be tried and the case was put down for hearing on the 30th December, but owing to the Court being engaged on that date it was again adjourned for hearing on the 24th February, 1953, on which date it was finally heard and disposed of. The Chemist's certificate dated 13th November 1952, was not served on the appellant until the 23rd January, i.e. 44 days after the date on which the appellant claimed to be tried, or 23 days after the date on which the case was first put down for hearing.

I have considered the matter and I regret I am unable to agree with Mr. Justice Abbott's decision, as in my opinion, a trial commences as soon as the accused has been charged and is in jeopardy. If that were not so, the fact of an accused pleading guilty and being convicted would not result in a trial at all. The fact that an accused, in answer to the charge, states that he claims to be tried instead of pleading guilty, to my mind, merely means that he wishes the prosecution to prove their case against him beyond reasonable doubt. If the trial did not commence until the hearing, neither the charge against the accused nor his plea would form part of it. It therefore follows that the document purporting to be the Chemist's report was not delivered to the appellant or his Counsel 10 days before the commencement of the trial, i.e. when the appellant was first charged (9th December, 1952) and therefore the proviso to section 399 (i) of the Criminal Procedure Code has not been complied with and the report not having been proved is not admissible as evidence (*Chong Yik v. Public Prosecutor*[2]). Without it I can find no evidence on the record to support the conviction on the first charge against the appellant.

In view of the above I allow the appeal on the first charge and quash the conviction and sentence. As the fine of $1,600 has been paid I order that it be refunded to the appellant.

Appeal allowed.